

S202 Review Procedures Teignbridge District Council

Background

The Housing Act 1996 ('the Housing Act') sets out, in Part 7, local housing authority functions in relation to persons who are homeless, or are threatened with homelessness.

Where a person (the 'applicant') applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, section 202 provides the applicant with a right to request a review of certain local housing authority decisions (for example a decision as to the applicant's eligibility for assistance, or as to the suitability of accommodation offered to the applicant). The 2017 Homelessness Reduction Act amended section 202 to add further rights of review. The 2018 Regulations revoke and replace the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 which made provision for reviews under section 202, and also make new provision in relation to new rights of review introduced by the 2017 Act

Right to request a review

Applicants have the right to request the housing authority review their decisions on homelessness cases in some circumstances. If the request is made in accordance with section 202 the housing authority, or housing authorities, concerned must review the relevant decision.

Under section 202(1) an applicant has the right to request a review of a housing authority's decision:

1. Of their eligibility for assistance (section 202(1) (a));
2. what duty (if any) is owed to them in relation to the duties owed to persons found to be homeless or threatened with homelessness (section 202(1) (b));

3. Of the steps they are to take in their personalised housing plan at the prevention duty (section 202(1) (bc) (i));
4. To give notice to bring the prevention duty to an end (section 202(1) (bc) (ii));
5. Of the steps they are to take in their personalised housing plan at the relief duty (section 202(1) (ba) (i));
6. To give notice to bring the relief duty to an end (section 202(1) (ba) (ii));
7. To give notice under section 193B (2) in cases of deliberate and unreasonable refusal to co-operate (section 202(1) (bb));
8. To notify their case to another authority under section 198(1) (i.e. a decision to refer the applicant at the main housing duty, to another housing authority because they consider that the conditions for referral are met) (section 202(1) (c));
9. Under section 198(5) as to whether the conditions are met for the referral of their case to another housing authority at the relief duty or main housing duty (including a decision reached either by agreement between the notifying and notified authority, or taken by a person appointed under the *Homelessness (Decisions on Referrals) Order 1998* (SI 1998 No.1578) where agreement cannot be reached) (section 202(1)(d));
10. Under section 200(3) (i.e. where a decision is made that the conditions for referral are not met and so the notifying housing authority owe the section 193 main housing duty) or a decision under section 200(4) (i.e. a decision that the conditions for referral to a notified authority in Wales are met and the notified authority owe the section 193 main housing duty) (section 202(1) (e));
11. As to the suitability of accommodation offered to the applicant under any of the provisions in paragraph (b) or (j) above or the suitability of accommodation offered under section 193(7) in relation to allocations under Part 6 [section 202(1)(f)]. Applicants can request a review of the suitability of accommodation whether or not they have accepted the offer (section 202(1B));
12. As to the suitability of accommodation offered to the applicant by way of a private rented sector offer under section 193 (section 202(1) (g)); or,
13. As to the suitability of accommodation offered to the applicant by way of a final accommodation offer or a final Part 6 offer under section 193A

or 193C (section 202(1)(h)). Applicants can request a review of the suitability of accommodation whether or not they have accepted the offer.

An applicant must request a review before the end of the period of 21 days beginning with the day on which they are notified of the housing authority's decision. The housing authority may specify, in writing, a longer period during which a review may be requested.

In reviewing a decision, the reviewing officer must have regard to any information relevant to the period before the decision was made (even if only obtained afterwards) as well as any new relevant information obtained since the decision.

In the case of a decision on whether the conditions are met for the referral of the applicant's case to another housing authority the request for a review must be made to the notifying authority.

NB There is no right to request a review of a decision reached on an earlier review.

Written representations

An applicant is not required to provide grounds or reasons for challenging the housing authority's decision in their request for review, but should be invited to do so.

The purpose of this is to invite the applicant to state their grounds for requesting a review (if they have not already done so) and to elicit any new information and particular issues that the applicant may have in relation to their request for a review.

The housing authority must notify the applicant that they, or someone acting on their behalf, may make written representations in connection with the request for a review.

The housing authority must notify the applicant that if they chose to make written representations where the request for review relates to:

- a.** The reasonable steps in an applicant's personalised housing plan (during the prevention or relief duty) (section 202(1) (ba) (i) or (bc) (i)); or,
- b.** A notice bringing the prevention duty to an end (including where the reason for this is deliberate and unreasonable refusal to co-operate) (section 202(1) (bc) (ii) and (bb));

The representations must be made to the housing authority within two weeks from the day on which the applicant requested the review. The regulations provide that this two week period is open to be extended to a longer period if the applicant and reviewing authority agree in writing.

Applicants should already have been provided with copies of their assessments and personalised housing plan which they will be able to share with any legal representatives. Housing authorities should provide further copies or any further information requested as quickly as possible to minimise delays.

Where the request for a review falls outside of the decisions listed under 19.15 of the Homelessness Code of Guidance i.e.

- the reasonable steps in an applicant's personalised housing plan (during the prevention or relief duty) (section 202(1)(ba)(i) or (bc)(i)); or,
- a notice bringing the prevention duty to an end (including where the reason for this is deliberate and unreasonable refusal to co-operate) (section 202(1)(bc)(ii) and (bb));

Written representations should be made within a reasonable period to allow sufficient time for the housing authority to respond to the review within the prescribed timeframe

The housing authority must also notify the applicant of the procedure to be followed in connection with the review (if this information has not been provided earlier).

Oral hearings

Regulation 7 provides that in cases where a review has been requested, if the housing authority, authorities or person carrying out the review consider that there is a deficiency or irregularity in the original decision, or in the manner in which it was made, but they are minded nonetheless to make a decision that is against the applicant's interests on one or more issues, they should notify the applicant:

- a. that they are so minded and the reasons why; and,
- b. that the applicant, or someone acting on their behalf, may, within a reasonable period, make oral representations, further written representations, or both oral and written representations.

Such deficiencies or irregularities would include:

- a) failure to take into account relevant considerations and to ignore irrelevant ones;
- b) failure to base the decision on the facts;
- c) bad faith or dishonesty;
- d) mistake of law;
- e) decisions that run contrary to the policy of Part 7 of the 1996 Act;
- f) irrationality or unreasonableness; or,
- g) procedural unfairness, e.g. where an applicant has not been given a chance to comment on matters relevant to a decision.

The reviewer must consider whether there is 'something lacking' in the decision, i.e. were any significant issues not addressed or addressed inadequately, which could have led to unfairness. An original decision could subsequently be rendered deficient because of intervening events which occurred between the date of the original decision and the review decision.

Period during which review must be completed

Regulation 9 provides that the period within which the applicant (or the applicant's authorised agent) must be notified of the decision on a review is:

- a. three weeks from the day of the request for a review, or three weeks from the day on which representations are received, where the original decision falls within section 202(1)(ba)(i), (bc), or section 202(1) (bb) and the effect of the notice is to bring the prevention duty to an end;
- b. eight weeks from the day of the request for a review, where the original decision falls within section 202(1)(a), (b), (ba)(ii), (c), (d), (e), (f), (g), or section 202(1)(bb) and the effect of the notice is to bring the relief duty to an end;
- c. ten weeks, where the original decision falls within section 202(1)(d) and was made jointly by two housing authorities under section 198(5) (a decision on whether the conditions for referral are met);

d. twelve weeks, where the original decision falls within section 202(1)(d) and it was taken by a person appointed by the notifying authority and the notified authority in accordance with the Schedule to the *Homelessness (Decisions on Referrals) Order* (SI 1998 No.1578).

The regulations provide that in all of these cases it is open to the reviewing authority to seek the applicant's agreement to an extension of the prescribed period. Any such agreement must be given in writing.

Late representations

The regulations require the reviewer to consider any written representations received subject to compliance with the requirement to notify the applicant of the decision on review within the period of the review, i.e. the period prescribed in the regulations or any extended period agreed in writing between the applicant and housing authority. It may in some circumstances be necessary to make further enquiries of the applicant about information they have provided.

The reviewer should be flexible about allowing such further exchanges, having regard to the time limits for reviews prescribed in the regulations. If this leads to significant delays, the applicant may be approached to agree an extension in the period for the review. Similarly, if an applicant has been invited to make oral representations and this requires additional time to arrange, the applicant should be asked to agree an appropriate extension.

Notification of decision on review

Section 203 requires a housing authority to notify the applicant in writing of their decision on the review.

The authority must also notify the applicant of the reasons for their decision where it:

- a. confirms the original decision on any issue against the interests of the applicant;
- b. confirms a previous decision to notify another housing authority under section 198(1) (referral of case under the main housing duty); or,
- c. confirms a previous decision that the conditions for referral in section 198 (referral of case under the relief duty or main housing duty) are met in the applicant's case.

Powers to accommodate pending a review

Under section 188(2A), where an applicant refuses a final accommodation offer or a final Part 6 offer in the relief stage and requests a review under section 202(1)(h) of the housing authority's decision as to the suitability of the accommodation offered, the relief duty to the applicant continues to apply despite section 193A(2), and the housing authority must continue to provide interim accommodation for applicants in priority need until the decision on the review has been notified to the applicant.

Sections 188(3), 199A (6) and 200(5) give housing authorities powers to secure accommodation for certain applicants pending the decision on a review.

Considerations which need to be made when deciding when to accommodate pending a review:

In considering whether to secure accommodation pending review housing authorities will need to balance the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, against proper consideration of the possibility that the applicant might be right. Housing authorities should consider the following, along with any other relevant factors:

- a) which it can properly be said that the decision was one which was either contrary to the apparent merits or was one which involved a very fine balance of judgment;
- b) whether any new material, information or argument has been put to them which could alter the original decision; and,
- c) the personal circumstances of the applicant and the consequences to them of a decision not to exercise the discretion to accommodate.

NB: Where an applicant is refused accommodation pending a review, they may seek to challenge the decision through judicial review.